

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of

Amendment of Part 97 of the Commission's
 Rules to Permit Non-Amateur, Non-United
 States Resident Foreign Nationals Access to
 The 446.0-446.1 MHz Band

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RM-10521

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: The Chief,
 Wireless Telecommunications Bureau

**COMMENTS OF ARRL, THE NATIONAL ASSOCIATION
FOR AMATEUR RADIO**

ARRL, the National Association for Amateur Radio, also known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to Section 1.405 of the Commission's Rules (47 C.F.R. §1.405), hereby respectfully submits its comments in response to the *Petition for Rule Making* (the Petition) filed on or about January 2, 2002 by Dr. Michael C. Trahos. The petition was placed on Public Notice (Report No. 2567) by the Commission August 8, 2002. Therefore, these comments are timely filed. The Petition seeks to amend either the Part 97 Amateur Radio Service rules and/or the Part 95, Subpart B Family Radio Service (FRS) rules so as to permit non-United States Citizens who are not resident in the United States, but who are instead visitors, transients, or tourists in the United States, to import and operate European 446 MHz (PMR 446) transceivers while in the United States on an unlicensed basis. In opposition to the rule changes sought in the Petition, ARRL states as follows:

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1. The argument set forth in the Petition is concise. It notes that the immensely popular Family Radio Service (FRS), which does not require individual licenses for operation in the United States under Part 95, Subpart B, and which has channels in the 462 and 467 MHz GMRS bands, has a counterpart service in Europe. Known as the "PMR 446" service, and operated pursuant to CEPT¹ standards with parameters similar to the FRS transceivers in the United States (12.5 kHz bandwidth FM, at power levels up to 0.5 Watts ERP) the European PMR 446 radios utilize eight channels in the 446.0-446.1 MHz band. The Petition recites the personal experience of the petitioner at Walt Disney World in Florida last year (2001) during which he noted extensive use of PMR 446 radios by European visitors to the United States. This operation the petitioner acknowledged to be unlawful, inasmuch as the radios operate in a band that is allocated to the Government Radiolocation Service on a primary basis, and to the Amateur Radio Service on a secondary basis. However, the Petition asserts that the European visitors to the United States, not necessarily being experienced with the details of radiocommunications regulations, were unaware that they could not use their unlicensed PMR 446 transceivers in the United States.

2. It is on this basis alone that the Petition requests regulatory accommodation for these visitors. The Petition notes that there is no evidence of any enforcement effort by the Commission relative to illegal importation (by users, apparently, rather than for sale commercially in the United States) or unlawful operation of this equipment in the United States by foreign nationals. Likewise, the Petition claims (again based on the personal experience of the petitioner) that United States citizens, traveling in Europe, routinely

¹ The European Conference of Postal and Telecommunications Administrations.

carry FRS radios and operate them (also illegally) in European countries.² The Petition proposes that the Commission authorize non-U.S. citizens who are visiting, who are transient, or who are tourists in the United States, to use their PMR 446 radios while in the United States on an unlicensed basis.

3. There are numerous, serious problems with this proposal. While it is premised on fostering international goodwill, and while the promotion of international goodwill is one of the principal bases and purposes of the Amateur Radio Service [47 C.F.R. §97.1(e)],³ the Petition is misguided. First of all, a rule change that would permit non-Amateur Radio licensees to operate unlicensed transmitters on Amateur Bands is contrary to the fundamental regulatory structure of the Amateur Service in Part 97; the Communications Act of 1934, and the International Radio Regulations. No one can operate an Amateur Radio Station without a license, or without a licensed control operator present. (47 C.F.R. §§97.5, 97.7). A transceiver operated in the United States at 446 MHz, conducting non-government communications on frequencies allocated to the Amateur Service must be operated in accordance with the Amateur Service rules. The Commission could not simply modify the Part 95 rules to permit operation of European PMR 446 radios in Amateur bands without a reallocation proceeding. There is no justification, and none offered in the Petition, for reallocation of any portion of the 446 MHz band. In fact, the Petition suggests that only a limited class of persons, unlicensed and not identifiable, should be permitted to operate portable transceivers in the United States, “secondary” to Amateur radio operations. That classification of eligibles, of

² That problem, if indeed as a matter of fact it is a problem, is not within the Commission’s jurisdiction.

³ The promotion of international goodwill in the Amateur Service is accomplished by international communications between and among Radio Amateurs. It does not envision communications between Amateurs and non-amateurs on Amateur bands. Such transmissions are not permitted unless they relate to emergencies. 47 C.F.R. §97.111(a)(2).

course, would be meaningless since there would be no practical way to resolve interference to stations in the Amateur Service from unlicensed, itinerant PMR 446 users.

4. Anyone from a CEPT country who wishes to operate a transceiver on Amateur bands in the United States is eligible to do so, provided that he or she possesses an Amateur Radio license from his or her home country. [47 C.F.R. §§97.5(d), 97.107]. It would not be a burden to a visiting foreign national to obtain an Amateur Radio license which would permit that person to operate equipment on Amateur allocations while visiting the United States.

5. The enforcement problems associated with the petition are obvious. Non-technical, unlicensed persons operating transceivers in a core portion of one of the most popular and heavily-used Amateur Radio allocations is a formula for serious interference. Nor is there any way to police the use of the frequencies, because the class of eligible unlicensed users is indistinguishable on-air from the remainder of the general population. There is no practical means of distinguishing foreign visitors from unlicensed persons wishing to utilize Amateur bands but unwilling to obtain a license for the privilege, absent a detailed inspection of credentials after tracking a mobile, presumably periodic, user. There are no callsigns, and no identification of transmissions required in FRS or PMR 446. The Commission is in no position to undertake an enforcement burden of this magnitude. Nor could the Commission expect the Amateur Service to self-regulate with this volume of potential intruders into Amateur allocations.

6. Furthermore, there is no showing that an additional opportunity for an FRS-type service [in addition to the United States FRS Service and the new VHF Multi-Use Radio Service (MURS) which operates on the VHF Color Dot channels] is necessary.

That Europeans in the United States are unaware of United States communications laws, or that those laws are routinely violated, is not a justification, without more, for legalization of that operation, or *de facto* creation of a new service. It goes without saying that not enforcing statutory or regulatory requirements, or exempting foreign visitors therefrom, would “foster international goodwill.” Not all means of fostering international goodwill, however, constitute public interest justifications sufficient to support regulatory changes. The FRS service here has been exceptionally popular, and that popularity has resulted in extremely low-cost portable transceivers that are affordable by European visitors even if useful to those visitors only for the limited periods of time that they are in the United States. In other words, foreign visitors have reasonable alternatives to the unlawful use of their PMR 446 radios while visiting the United States. Rewarding ignorance of regulatory obligations, on the other hand, is misguided policy.

7. Finally, the Petition is silent on the effect of the proposal on the Government Radiolocation service. ARRL takes no position on that subject at this time, but would note that the historic compatibility between government uses and the Amateur Service in shared bands is premised, in part, on the technical competence of Amateur Radio licensees. This competence is notably absent in the class of unlicensed users that the Petition proposes to unleash in a band where the primary user is the Federal Government.

8. If nothing else, this Petition reveals the problems that arise from the failure to harmonize allocations internationally. Had the United States and CEPT taken steps to harmonize FRS channels internationally prior to creating the FRS in the first place, the problems reasonably noted by the petitioner might have been avoided. The Amateur Radio community has worked hard to establish, through licensing provisions, means for

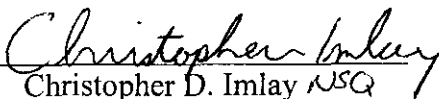
“international roaming” among Amateur Radio licensees around the world, and the Commission has been of assistance in furthering this goal. ARRL is not unsympathetic to the compatibility concerns of international travelers, but at the same time, there are far less problematic solutions to the problem noted by the petitioner than those contained in the Petition. The relief requested in the instant Petition creates worse problems than the one being addressed. This Petition constitutes a completely unworkable plan, and must be denied by the Commission.

Therefore, the foregoing considered, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission deny or dismiss the instant Petition for Rule Making.

Respectfully submitted,

**ARRL, the National Association
for Amateur Radio**

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September 9, 2002

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing COMMENTS OF ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO, to the following, this 9th day of September, 2002.

Michael C. Trahos, D.O.
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Christopher D. Imlay *NSQ*